

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 MARCUS SHARIF MCNEAL,

Case No. 2:16-cv-01618-JAD-EJY

5 Petitioner

6 v.

**Order Appointing Counsel
and Setting Deadlines**

7 BRIAN E. WILLIAMS, et al.,

8 Respondents

9 Because the Federal Public Defender has entered an appearance on behalf of Petitioner
10 Marcus Sharif McNeal (ECF No. 61), IT IS HEREBY ORDERED that:

- 11 1. The Federal Public Defender, through Kimberly Sandberg, Esq., is appointed as
12 counsel for McNeal under 18 U.S.C. § 3006A(a)(2)(B). Ms. Sandberg will represent
13 McNeal in all federal proceedings related to this matter, including any appeals or
14 certiorari proceedings, unless allowed to withdraw.
- 15 2. McNeal will have until June 1, 2020, to file an amended petition or seek other
16 appropriate relief. This deadline and any extensions of it may not be construed as
17 implied findings regarding the federal limitation period or a basis for tolling. McNeal
18 at all times remains responsible for calculating the limitation period and timely
19 asserting claims, without regard to any court-ordered deadlines or extensions. So, a
20 petition or amended petition filed within a court-ordered deadline may still be
21 dismissed as untimely if it violates the statute of limitations.¹
- 22 3. If McNeal files an amended petition, Respondents will have 60 days from the date of
23 service to respond to it—including by motion to dismiss. McNeal will have 30 days
24 from the date of service of an answer to file a reply. However, Local Rule LR 7-2(b)
25 governs the scheduling for responses and replies to motions filed by either party,
26 including motions filed in lieu of pleadings.

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28 ¹ See *Sossa v. Diaz*, 729 F.3d 1225, 1235 (9th Cir. 2013).

- 1 4. Any procedural defenses raised by Respondents to the counseled amended petition
2 must be raised together in a single, consolidated motion to dismiss. Successive
3 motions to dismiss will not be entertained, and any procedural defenses omitted from
4 the consolidated motion to dismiss will be waived. Respondents may not file a
5 response that consolidates their procedural defenses, if any, with their response on the
6 merits. But arguments that an unexhausted claim clearly lacks merit may be included
7 a procedural-defense response. If Respondents do seek dismissal of unexhausted
8 claims under 28 U.S.C. § 2254(b)(2) they must: (1) do so in a single motion to
9 dismiss, not in the answer; and (2) specifically direct their argument to the standard
10 for dismissal under § 2254(b)(2).² Basically, no procedural defenses, including
11 exhaustion, may be included with the merits in an answer. All procedural defenses,
12 including exhaustion, must be raised in a single dismissal motion.
- 13 5. In any answer filed on the merits, Respondents must specifically cite to and address
14 the applicable state-court-written decision and state-court-record materials, if any,
15 regarding each claim within the response as to that claim.
- 16 6. All state-court records and exhibits must be filed in accordance with LR IA 10-3 and
17 LR IC 2-2 and include a separate index identifying each exhibit by number or letter.
18 The index must be filed in CM/ECF's document upload screen as the base document
19 to receive the base docket number (*e.g.*, ECF No. 10). Each exhibit must then be
20 filed as an "attachment" to the base document to receive a sequenced sub-docket
21 number (*e.g.*, Exhibit A (ECF No. 10-1), Exhibit B (ECF No. 10-2), Exhibit C (ECF
22 No. 10-3), and so forth). If the exhibits will span more than one filing, the base
23 document in each successive filing must be either a copy of the index or volume
24 cover page.³
- 25 7. A paper copy of any exhibit over 50 pages must be delivered to the **Las Vegas**

26
27 ² See *Cassett v. Stewart*, 406 F.3d 614, 623–24 (9th Cir. 2005).

28 ³ See LR IC 2-2(a)(3)(A).

Clerk’s Office and addressed to the attention of “Staff Attorney.” Paper copies must be (i) file-stamped copies, bearing the document number assigned by the CM/ECF system, (ii) securely bound on the left side to display the document number, and (iii) tabbed to display exhibit numbers or letters on the right side or bottom of the copies.⁴

Dated: March 2, 2020

U.S. District Judge Jennifer A. Dorsey

⁴ See LR IA 10-3(i); LR IC 2-2(g).